

illegally and with material irregularity in dismissing the appeal for default under section 556.

We therefore allow this application, and, setting aside the order of the lower Court dismissing the appeal for default, we direct the record to be returned to the Court below with instructions to pass a legal order, namely, one simply dismissing the appeal without adding the words "for default" or "for default of prosecution." We make no order as to costs.

Application allowed.

APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Barkitt.

BHAWANI PRASAD AND ANOTHER (PLAINTIFFS) v. GHULAM MUHAMMAD AND OTHERS (DEFENDANTS).*

Act No. VII of 1881 (N.-W. P. Rent Act), section 7—Esproprietary tenant—Esproprietary tenancy arising on sale of part of the zamindár's share.

In order that the provisions of section 7 of Act No. XII of 1881 may come into operation, it is not necessary that the zamindár should lose or part with his proprietary rights in respect of the whole of his interest in the *mahál*.

In this case the plaintiffs-appellants purchased 14 annas out of a 16-anna mahál from the predecessor in title of the defendants-respondents, who retained the remaining 2 annas in his possession. The plaintiffs subsequently sued the representatives of their vendor in the court of a Munsif for joint proprietary possession of a certain grove belonging to the mahál in question and for damages on account of fruit appropriated by the defendants-respondents. The defendants pleaded that the land in suit was their *sér* and that the suit was not cognizable by a Civil Court.

The Court of first instance (Munsif of Allahabad) found that the land was *sér* of the defendants of which they had become ex-proprietary tenants, and that consequently the suit was not within his jurisdiction; and he dismissed it.

On appeal by the plaintiffs, the lower appellate Court (District Judge of Allahabad) dismissed the appeal, on the finding

* Second appeal No. 1261 of 1893, from a decree of F. E. Elliot, Esq., District Judge of Allahabad, dated the 26th September 1893, confirming a decree of Nand Lal Dinerji, Esq., Munsif of Allahabad, dated the 12th July 1893.

1895.

JAWAHIR
SINGH
v.
DEBI SINGH.

1895
December 13.

1895

BHAWANI
PRASAD
v.
GHULAM
MUHAMMAD.

that the defendants were either proprietors or ex-proprietary tenants and that in either event on the case as framed by the plaintiffs a Civil Court had no jurisdiction.

The plaintiffs appealed to the High Court.

Muunshi *Ram Prasad* and Pandit *Sundar Lal* for the appellants.

Mr. *T. Conlan* and Maulvi *Mahmud Hasan* for the respondents.

EDGE, C. J., and BURKITT, J.—The plaintiffs in this suit purchased fourteen out of sixteen annas owned by the defendants in a village. They brought their suit to obtain possession of a portion of the *sir* land in the village, which had been held by the defendants as *sir* at the time of sale. They have relied upon a ruling of the Board of Revenue of these Provinces, according to which, if it is correct, section 7 of Act No. XII of 1881 can never apply so long as the zamindar retains the minutest fraction of his proprietary right in the village, all of his interest in which except such fraction he has sold. As we have understood the Board of Revenue's decision, that Board considered that the section only applied when the zamindar lost or parted with all his proprietary rights and ceased to have any proprietary rights in the village. The object of the Legislature in enacting section 7 was to provide some sort of protection to proprietors of land whose rights were parted with either by private contract or auction sale. The Legislature intended that such proprietors should not be cast on the world, but should still be left with some interest in the lands which they had held as their *sir*. It accordingly enacted that they should become exproprietary tenants of the *sir* land held by them at the time when their proprietary rights were lost or parted with. The Legislature also further favored such proprietors by enacting that the rent payable by them should be 4 annas in the rupee less than the prevailing rate payable by tenants at will for land of similar quality and with similar advantages.

If we were to read this section and apply it as it was read and applied by the Board of Revenue, the object of the Legislature would be frustrated by an evasion of the statute. One is well

aware that attempts are frequently made to evade the effect of section 7, and we should be opening a door through which it would be possible for such evasions to become general in these Provinces. All that would be necessary, if the ruling of the Board of Revenue is correct, to prevent the arising of exproprietary rights would be for a purchaser on a sale from a zamindár to leave with the zamindár the minutest fraction of the proprietary rights which he had. He would still be a proprietor, no matter how small the fraction was, and, according to the Board of Revenue, section 7 would not apply, although the proportion of *sír* represented by the fractional interest remaining in the zamindár might be represented by the one-hundredth part of a bigha. Further, according to the Board of Revenue, that one-hundredth part of a bigha would be the only scrap of land in the village of which the unfortunate zamindár could ever become an ex-proprietary tenant. That could not have been the protection which the Legislature intended to afford by section 7. The first Court dismissed the suit. The lower appellate Court dismissed the appeal. We dismiss this appeal and confirm the decrees below with costs.

Appeal dismissed.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Burkitt.

DEBI PRASAD (PLAINTIFF) v. BALDEO (DEFENDANT).

Civil Procedure Code, section 276—Execution of decrees—Attachment—Lease of property under attachment.

Held that a *zar-i-peshgi* lease and an ordinary agricultural lease made by a judgment-debtor of property under attachment were alienations which were void by reason of the prohibition contained in section 276 of the Code of Civil Procedure.

The plaintiff in this case sued for possession of immovable property and cancellation of two leases of the said property. His case was that he was purchaser of certain property, including that in suit, at an auction sale under decrees held by one Gobardan and by others against one Balbhaddar Singh, and had obtained confirmation of the sale and formal delivery of the property sold; but

Second appeal No. 1174 of 1893, from a decree of Babu Baijnath, Subordinate Judge of Agra, dated the 28th July 1893, reversing a decree of Babu Hari Mohan Banerji, Munsif of Agra, dated the 6th March 1893.

1895

BHAWANI
PRASAD
v.
GHULAM
MUHAMMAD.

1895
December 13.
